

CONSOLIDATED RAIL CORPORATION

SIX PENN CENTER PLAZA
PHILADELPHIA, PENNSYLVANIA 19104

RECORDATION NO. 8548 Filed & Recorded

November 2, 1976

1401.2 1976-1 22 PM

INTERSTATE COMMERCE COMMISSION

Mr. Robert L. Oswald
Secretary
Interstate Commerce Commission
Washington, D. C. 20423

RECORDATION NO. 8548 Filed & Recorded

OCT 2 1976-1 22 PM

Dear Mr. Oswald:

INTERSTATE COMMERCE COMMISSION

Please record, as provided in Section 20C of the Interstate Commerce Act, (i) Agreement and Assignment dated as of October 31, 1976 and (ii) Amendment dated as of October 31, 1976 to Conditional Sale Agreement dated as of September 15, 1974. The Agreement and Assignment should receive a recordation number prior to that of the Amendment.

Five counterpart originals of the Amendment, and two counterpart originals and two certified copies of the Agreement and Assignment are enclosed with this letter of transmittal, together with a check in the amount of \$60.00.

The information requested for such recordation by order of the Interstate Commerce Commission is as follows:

Section 1116.4(b) - The names and addresses of the parties to the transaction:

Vendor: The Fidelity Bank
Broad and Walnut Streets
Philadelphia, Pennsylvania

Vendee: Consolidated Rail Corporation
Six Penn Center Plaza
Philadelphia, Pennsylvania

Assignor: Berliner Bank Aktiengesellschaft
Hardenbergstrass - 32
1000 Berlin 12, West Berlin

Assignee: The Fidelity Bank
Broad and Walnut Streets
Philadelphia, Pennsylvania

6-307A050

NOV 2 1976

60-

Washington, D. C.

Section 1116.4(c) - Description of the equipment:

FEE OPERATION BR.
I.C.C.

NOV 2 12 50 PM '76

RECEIVED

Mr. Robert L. Oswald
November 2, 1976
page two

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>No. of Units</u>	<u>Marked*</u>	<u>Numbers ((/)) denotes inclusive series)</u>
GP7 Loco- motives	B-B	25	Penn Central or Conrail	5891,5892,5896 5611,5627,5629 5635,5638,5644 5645,5655,5658 5688,5690,5711 5719,5759,5766 5778,5791,5799 5808,5841,5842 5844
Switcher Locomotives	B-B	26	Penn Central or Conrail	8915,8930,8972 9045,9068,9075 9081,9098,9126 9128,9129,9133 9155/9168
H30a Hopper Cars	LO	1	Penn Central or Conrail	878546
H32 Hopper Cars	LO	3	Penn Central or Conrail	885587,885591 885593
Cabin Cars	NE	12	Penn Central or Conrail	23246/23248, 23250,23254/23257, 23259/23262
Transfer Caboose	NE	123	Penn Central or Conrail	018245/018251 018253/018264 018282/018294 018296/018301 018303/018304 018306/018316 018318/018323 018325/018326 018328/018345 018347/018358 018360/018377 018379/018394
18 Man Sleepers	MWX	6	Penn Central or Conrail	27013,27020, 27025,27035, 27043,27048

*The equipment is marked on each side, in letters no less than one inch in height: "Owned by a Bank or Trust Company Under Security Agreement filed Under I.C.C. Section 20c [car numbers] as filed ICC-20c."

Mr. Robert L. Oswald
November 2, 1976
page three

Section 1116.4(e) - The Conditional Sale Agreement was previously recorded with the Interstate Commerce Commission at 2:05 P.M., on April 29, 1975.

Section 1116.4(f) - The two counterpart originals of the Agreement and Assignment and three counterpart originals of the Amendment should be returned, in care of the messenger presenting this, to the undersigned at Consolidated Rail Corporation, Room 1138, Six Penn Center Plaza, Philadelphia, Pennsylvania, 19104.

Very truly yours,

A handwritten signature in cursive script, appearing to read "David A. Walker".

David A. Walker
Assistant Corporate Counsel

DAW:smg

Enclosures

RECORDATION NO. 8548 Filed & Recorded

Nov 2 1976 1 01 PM

INTERSTATE COMMERCE COMMISSION

COMMONWEALTH OF PENNSYLVANIA:
: SS
COUNTY OF PHILADELPHIA :

C E R T I F I C A T E

I, ALFONSO J. DiGREGORIO, a Notary Public in the Commonwealth of Pennsylvania, County of Philadelphia, do hereby CERTIFY that I have compared the attached copy of AGREEMENT AND ASSIGNMENT dated as of October 31, 1976 between BERLINER BANK AKTIENGESSELLSCHAFT and THE FIDELITY BANK with an executed copy of said Agreement and Assignment, and that the copy is a true and correct copy thereof.

Alfonso J. DiGregorio

Alfonso J. DiGregorio
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires August 7, 1980

AGREEMENT AND ASSIGNMENT

AGREEMENT AND ASSIGNMENT, dated as of October 31, 1976, between BERLINER BANK AKTIENGESELLSCHAFT, a banking institution having its principal place of business at D-1000 Berlin 12, Hardenbergstrasse 32, Berlin, West Germany (the "Bank") and THE FIDELITY BANK, a Pennsylvania banking corporation (the "Assignee").

WHEREAS, American Contract Company, a Delaware corporation ("ACC"), entered into a Conditional Sale Agreement, dated as of September 15, 1974 (the "New CSA"), with Robert W. Blanchette, Richard C. Bond and John H. McArthur, Trustees of the property of Penn Central Transportation Company, Debtor (collectively the "Trustees"), covering certain units of railroad rolling stock, as described in the New CSA (the "Equipment"); and

WHEREAS, ACC, by Agreement and Assignment, dated as of September 15, 1974, assigned to the Bank all claims it had against the Trustees under the New CSA; and

WHEREAS, on April 1, 1976, under an Assignment dated that date the Trustees assigned their rights under the New CSA to Consolidated Rail Corporation (the "Vendee") pursuant to

the provisions of the Regional Rail Reorganization Act of 1973, as amended, and the Vendee assumed all of the obligations of the Trustees under the New CSA; and

WHEREAS, the Bank now desires to sell to the Assignee and the Assignee desires to purchase from the Bank all of the Bank's right, title and interest in, to and under the New CSA and the Equipment;

NOW, THEREFORE, this Agreement and Assignment (this "Assignment") Witnesseth: That, in consideration of the sum of One Dollar and other good and valuable consideration paid by the Assignee to the Bank, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

Section 1. The Bank hereby sells, assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of the Bank in and to each unit of the Equipment;

(b) all the right, title and interest of the Bank in and to the New CSA and in and to any and all amounts which may be or become due or owing by the Vendee to the Bank under the New CSA on account of the Conditional Sale

Indebtedness (as defined in the New CSA and hereinafter referred to as the "Conditional Sale Indebtedness") and interest thereon, and in and to any other sums due or becoming due from the Vendee under the New CSA; and

(c) all the Bank's rights, powers, privileges and remedies under the New CSA;

without any recourse, however, against the Bank for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the New CSA; provided, however, that this Assignment shall not subject the Assignee to, nor transfer or pass or in any way affect or modify any liability of the manufacturer of the Equipment (the "Manufacturer") to construct and deliver the Equipment in accordance with the New CSA or the predecessor agreement therein referred to as the "CSA" or in respect of any obligation of the Manufacturer under the CSA or otherwise in respect of patent indemnities or warranties of materials, workmanship, fitness or otherwise, nor in any way affect or modify any liability or any remaining obligation of such Manufacturer, nor relieve the Vendee from any of its obligations under any provision of the New CSA, it being understood and agreed as a condition to the acceptance of this Assignment that, notwithstanding this Assignment or any subsequent assignment

pursuant to the provisions of Article 15B of the New CSA, all obligations of the Manufacturer to the Vendee, if any, with respect to the Equipment or otherwise shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the Bank hereby authorizes and empowers the Assignee, in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Bank, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the New CSA, but at the expense and liability and for the sole benefit of the Assignee.

Section 2. The Assignee may further assign all or any of its rights under the New CSA, including the right to receive any payments due or to become due to it thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all of the obligations of the Assignee hereunder.

Section 3. The Bank represents and warrants to the

Assignee that at the time of the delivery of this Assignment the Bank has valid, legal title to the rights and interest of the Vendor under the New CSA (as defined therein) and good and lawful right, power and authority to sell all of the same, and that such rights and interest under the New CSA were free of all claims, liens, security interests and other encumbrances (other than those created by the New CSA and heretofore held by the Bank and other than the rights of the Assignee hereunder) and defenses; and the Bank further agrees that it will defend the title to such rights and interest under the New CSA against the demands of all persons whomsoever based upon claims originating prior to the delivery of this Assignment; all subject, however, to the provisions of the New CSA and the rights of the Vendee thereunder. The Bank further represents and warrants that there are no offsets, counterclaims or defenses on the part of the Vendee to any of the obligations of the Trustees under the New CSA and that the Bank has received no payments of principal of or interest on the Conditional Sale Indebtedness other than the principal and interest payments due and owing on March 15, 1975, September 15, 1975, March 15, 1976 and September 15, 1976 (as shown on Schedule B to the New CSA). The Bank agrees with the Assignee to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges, losses, damages and expenses

resulting from any breach of any of the foregoing representations and warranties.

Section 4. Concurrent with the delivery of this Assignment there has been delivered to the Assignee (i) a bill of sale, dated the date hereof, from ACC to the Assignee transferring to the Assignee all right, title and interest of ACC in and to the New CSA and all of the units of Equipment, (ii) a bill of sale, dated the date hereof, from the Bank to the Assignee transferring to the Assignee all right, title and interest of the Bank in and to the New CSA and all of the units of Equipment, (iii) a bill of sale, dated the date hereof, from the Vendee to the Assignee transferring to the Assignee, subject to the New CSA, all right, title and interest of the Vendee in and to all of the units of Equipment, and (iv) an opinion of the Bank's counsel to the effect that this Assignment has been duly authorized, executed and delivered by the Bank and, assuming due authorization, execution and delivery by the Assignee, is a valid, legal and effective instrument binding upon the Bank, and to the further effect that the delivery of this Assignment to the Assignee vests in the Assignee all the rights, titles, interests, powers and privileges in, to and under the Equipment and the New CSA purported to be assigned or transferred thereby.

Section 5. The Bank hereby agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests intended so to be, and that, upon further request of the Assignee, its successors and assigns, it will execute and deliver any and all instruments which may be necessary or proper in order to discharge of record the New CSA or any other instrument evidencing any interest of the Bank therein or in the Equipment.

Section 6. The Bank agrees that any legal action or proceeding against it with respect to this Assignment or its bill of sale may be brought in the courts of the Commonwealth of Pennsylvania or of the United States of America for the Eastern District of Pennsylvania or in the Federal Republic of Germany, as the Assignee may elect, and by execution and delivery of this Assignment the Bank submits to each such jurisdiction and, in the case of the courts of the Commonwealth of Pennsylvania or of the United States of America for the Eastern District of Pennsylvania, hereby irrevocably designates,

appoints and empowers the Honorary Consul of the Federal Republic of Germany, with offices on the date of this Agreement in the PNB Plaza Building, Philadelphia, Pennsylvania (or if there be none at the time, the Prothonotary of Philadelphia County), to receive for and on behalf of the Bank service of process in the Commonwealth of Pennsylvania in any legal action or proceeding with respect to this Assignment or the Bank's bill of sale. The Bank further irrevocably consents to the service of process out of said courts in any such action or proceeding by mailing copies thereof by United States mail, postage prepaid, to its address at 12 Hardenberg Strasse 32, Berlin, Germany.

Section 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, registration or recording of the New CSA and this Assignment as shall be conferred by the laws of the several jurisdictions in which the New CSA or this Assignment shall be filed, registered or recorded.

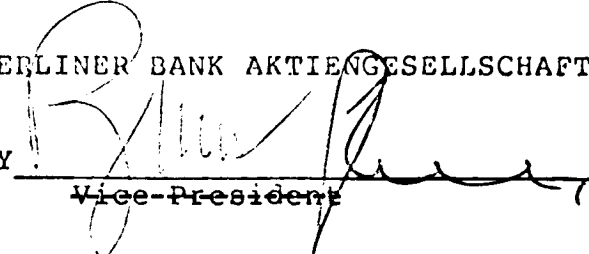
IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized

officers and duly attested, all as of the date first above written.

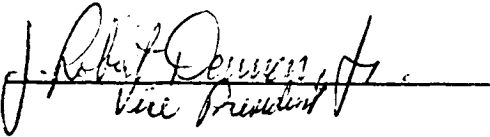
Attest

BERLINER BANK AKTIENGESELLSCHAFT

BY

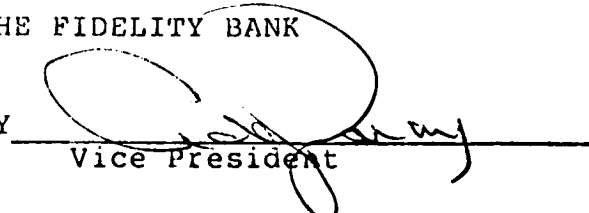

Vice-President

Attest


Vice President

THE FIDELITY BANK

BY


Vice President

UR Nr. 57 /1976

Vorstehende Unterschriften

a) des Herrn Günther B e r n t

b) des Herrn Lothar H e c k ,

beide im Hause der Berliner Bank Aktiengesellschaft in Berlin 12,
Hardenbergstraße 32, beglaubige ich.

Herr Günther Bernt ist Mitglied des Vorstands, Herr Lothar Heck
Prokurist der Berliner Bank Aktiengesellschaft, mit der Befugnis zu
gemeinsamer Vertretung der Bank, wie ich heute durch Einsichtnahme
in das Handelsregister des Amtsgerichts Charlottenburg HRB 527 fest-
gestellt habe.

Berlin 31, den 26. Oktober 1976




Notar

COMMONWEALTH OF PENNSYLVANIA :

SS

COUNTY OF PHILADELPHIA :

On this ^{November} 1st day of ~~October~~, 1976, before me personally appeared Adam J. Parone to me personally known, who, being by me duly sworn, says that he is a Vice President of THE FIDELITY BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on this date on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Lola Perone
Notary Public

LOLA PERONE
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires January 2, 1979

GERMANY
CITY OF BERLIN

: SS
:

See page 9

RMANY

GERMANY
CITY OF BERLIN
CONSULAR SERVICE OF THE
UNITED STATES OF AMERICA } SS

:
: SS
:

Y OF BERLIN

Vice

I, Marsha E. Barnes, Consul of the United States of America at Berlin, Germany, duly commissioned and qualified, hereby certify that Norbert Henzel, whose name is subscribed the foregoing paper, was at the time of subscribing the same a duly public in Berlin, Germany, duly appointed and qualified, whose official acts faith and credit are due.

IN TESTIMONY WHEREOF, I have hereunto subscribed my
and affixed the seal of the Consular Service of the United
States of America at Berlin, Germany, this _____ day of October,

n
S
l

American Consul

M. E. Barnes
American Consul

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Consolidated Rail Corporation, a Pennsylvania corporation, hereby acknowledges due notice of the assignment made by the foregoing Agreement and Assignment, dated as of October 31, 1976, between Berliner Bank Aktiengesellschaft and The Fidelity Bank.

CONSOLIDATED RAIL CORPORATION

By *S. A. Callahan*
Vice-President
*Specialist Equipment Financing
Plans*